

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1166 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

ISHWAR SHARAM MATHUR

Versus

BALMUKUND NATHULAL PUROHIT

Appearance:

MR MAHESH R SHAH for Petitioners

MR HARESH C PATEL for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 29/08/97

ORAL JUDGEMENT

1. This Civil Revision Application filed under Section 115 of the Code of Civil Procedure is directed against the order passed by the court of Small Causes in HRP Suit No. 1258 of 1990. It appears that the present petitioners applied to the trial court at Exhibit 21 for being impleaded as plaintiffs in the suit which was filed by one Balmukund Nathulal Purohit. The suit was filed by

Balmukund Nathulal Purohit for injunction against Surajben Khodabhai to the effect that said defendant should not in any way stop or cause obstruction in going to the terrace of the building known as "Haribhai Hathibhai Patel's Chawal". It was the case of the third parties that they were also residing in different parts of the chawl as tenants and that they were using the open compound without any obstruction from the landlord. It was, therefore, contended by the third parties that they apprehend that they may be restrained from using the open compound and, therefore, they should be permitted to be joined or impleaded as parties in the suit. Such application filed at Exhibit 21 was resisted on the ground that the suit was filed against a specific tenant from using the terrace and that in suit of such a nature, the third parties have no right to be impleaded as no grievance was made against the third parties. It was submitted that the plaintiff is the dominus lites and since the relief was claimed only against the defendant for injuncting her, the third parties were neither necessary nor proper parties and were, therefore, not required to be impleaded as parties in the suit. It was contended that, in fact, no cause of action has arisen against third parties and that there was no relief claimed in the suit by the landlord against the other tenants restraining them from using the terrace. The use of terrace for the purpose of putting antenna for running television was even otherwise permitted but there was no question of permitting any tenant to use the open ground as if such open ground was let out. It was further submitted that all the third parties were not permitted to use the terrace and in absence of any writing or anything to show that the tenants were permitted to use the terrace, they cannot be impleaded as parties to the suit either as necessary parties or proper parties. The trial court, therefore, dismissed the application of the third parties to be impleaded as party plaintiffs. The order of the trial court would not in any way preclude the third parties from bringing an independent suit for the right which they are canvassing against the landlord. In that view of the matter, it cannot be said that the trial court has committed any jurisdictional error which would call for interference of this court. Nothing was shown by the tenants to show that they were permitted to use the terrace and in absence thereof, they cannot be permitted to be impleaded as parties to the suit.

2. In the result, the Civil Revision Application fails. Rules is discharged. The ad interim relief granted earlier stands vacated.

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